STATE OF MICHIGAN

COURT OF APPEALS

STANLEY BUILDING COMPANY, CARL GIORDANO, and MARIA GIORDANO,

Plaintiffs-Appellants,

v

CITY OF ST. CLAIR SHORES,

Defendant-Appellee,

and

HARVEY HOHLFELDT and KAYE HOHLFELDT,

Defendants.

UNPUBLISHED
July 27, 2004

No. 245168
Macomb Circuit Court
LC No. 99-004408

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right judgment in favor of defendant City of St. Clair Shores (The City). We affirm.

Plaintiffs own two single-family lakefront residential lots on Jefferson Avenue in the City. Plaintiffs have been involved in litigation regarding the development of these lots since October 1992, when defendants Harvey and Kaye Hohlfeldt and another neighbor filed a complaint against plaintiffs. The trial court entered a stipulated order on September 1, 1993, dismissing the case but requiring that the Hohlfeldts' and the other neighbor's request for injunctive relief be heard prior to the City issuing any building permits or final approval of any subsequent development proposed by the Giordanos.

Plaintiffs recorded a master deed and related documents in December 1995, allegedly establishing the Pier Court Condominium (Pier Court) development under the Michigan Condominium Act (MCA), MCL 559.101 *et seq.* The Pier Court development consists of seven single-family residential lots with a private road providing access to Jefferson Avenue. After conducting several hearings, the trial court entered an order establishing procedure on April 22, 1997. The order required plaintiffs to submit their site condominium project to the City for its consideration under the laws and ordinances that were in effect when master deed was recorded.

The City's planning consultant, David Scurto, found that the lots did not meet the minimum required size and did not abut a public street, as required by subdivision regulations and zoning ordinances. Scurto also identified several landscaping and lighting issues. At a planning commission meeting attended by six of the nine commissioners, four commissioners voted to recommend denial of the Pier Court development. A motion to recommend approval was not seconded. The City Council, voting five to one, denied approval of the project, citing the insufficient lot size, failure to abut a public street, and "all of the reasons stated in Mr. Scurto's review." The trial court found that the Pier Court development was subject to the City's review. Because the detached condominium units resemble homes, the trial court concluded that the proposed development was not unlike a traditionally platted subdivision. The appeal currently before us concerns the trial court's decision affirming the City Council's decision to deny approval of plaintiffs' Pier Court development project.

Plaintiffs first argue that the trial court erred in affirming the City Council's decision because the City lacked authority, there were no applicable ordinances, the existing ordinance was vague, and plaintiffs' site plan substantially conformed to any applicable standards. *Anchor Steel & Conveyor Co v Dearborn*, 342 Mich 361, 367-368; 70 NW2d 753 (1955). We review de novo matters of statutory construction, including the interpretation of ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). Review of administrative decisions is limited to whether the decision is authorized by law and supported by "competent, material, and substantial evidence on the whole record." Const 1963, art 6, § 28; *Dowerk v Oxford*, 233 Mich App 62, 72; 592 NW2d 724 (1998). "Substantial evidence" is evidence that a "reasonable person would accept as sufficient to support a conclusion." *Dowerk, supra* at 72. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance. *Id.* We must consider all of the evidence on the record, not just that supporting the agency's decision. *Gordon v Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806 (1994). We must also give due deference to the agency's regulatory expertise and may not "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *Id.* When a city council acts as a board, it acts in its administrative, rather than legislative, capacity. *Osius v St Clair Shores*, 344 Mich 693, 695-696; 75 NW2d 25 (1956).

The "condominium unit" of a site condominium is typically the home itself and is defined as the "portion of the condominium project designed and intended for separate ownership and use." MCL 559.104(3). The "general common elements" are usually the private roads used by the owners to gain access to the public roads, and the term is defined as "the common elements other than the limited common elements." MCL 559.106(5). The lots upon which the homes sit are called "limited common elements," which is defined as "a portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners." MCL 559.107(2). Most site condominium developments have exactly the same wide-ranging ramifications as traditionally platted subdivisions. Comment, *Site Condominiums: Fast Homes, For A Price*, 6 Cooley L R 511, 517 (1989).

Local governments have no general or inherent powers. *Crain v Gibson*, 73 Mich App 192, 200; 250 NW2d 792 (1977). In the absence of a zoning ordinance, a property owner has the right to use his property, as long as that use does not amount to a nuisance, and a board may not prohibit a permissible use. *Anchor Steel, supra* at 367-368. The MCA provides:

> A condominium project shall comply with applicable local law, ordinances, and regulations. Except as provided in subsection (2), a proposed or existing condominium project shall not be prohibited nor treated differently by any law, regulation, or ordinance of any local unit of government, which would apply to that project or development under a different form of ownership. [MCL 559.241(1).]

The Home Rule City Act, MCL 117.1 *et seq.*, authorizes a city to provide for the establishment of zoning ordinances in its charter. MCL 117.4i(c). The St. Clair Shores Charter, § 10.023(a), provides that the City has the power to:

> establish by ordinance districts or zones within which the use of lands and structures, the height, the area, the size and location of buildings and required open spaces for light and ventilation of such buildings, and the density of population, may be regulated by ordinance, and such regulations in one or more districts may differ from those in other districts.

The City enacted the subdivision regulations ordinance, which incorporates the standards of the zoning ordinance. St. Clair Shores Subdivision Regulations, § 402(1). Pursuant to the subdivision regulations, all preliminary and final plats must be reviewed by the planning commission, which prepares recommendations for the City Council. St. Clair Shores Subdivision Regulations, §§ 301(5)-(6), 302(2).

The City enacted the zoning ordinance, which requires site plan approval if the plan proposes any "change in use that could affect compliance with the standards set forth in this Ordinance." St. Clair Shores Zoning Ordinance, § 37.79(2)(f). The Ordinance defines "use" as the "purpose for which land or premises or a building thereon is designed, arranged or intended, or for which it is occupied or maintained, let or leased." St. Clair Shores Ordinance, § 35.3(88).

In his letter to the City's planner, Scurto stated that site plan review was required for Pier Court because "the increased housing density on the two existing lots constitutes a change in the nature or character of use. Simply stated, where two homes could be constructed fronting Jefferson Avenue now, the proposal requests approval for seven plus construction on [sic] a new dead-end street." Because we must give due deference to the City Council's expertise and may not displace an agency's choice between reasonably differing views, we will not disturb the City's conclusion that an increase in housing density constitutes a change in use that triggers site plan review. *Gordon, supra* at 232. Scurto's report is competent, material, and substantial, and supports the City Council's decision.

The April 22, 1997, order, which required plaintiffs to submit their site proposal to the City, has not been appealed. The Order Establishing Procedure provided that the Pier Court project:

> shall be submitted to [the City] for review and approval pursuant to the laws and ordinances in effect at the time their master deed was recorded. [The City] shall review this proposal in the same manner and pursuant to the same procedure that it would for any other proposed project it receives.

Moreover, the MCA provides that a master deed shall be recorded, and that detailed architectural plans and specifications for the condominium project "shall be filed with the local unit of government in which the project is located." MCL 559.173(1), (4). MCL 559.166(2)(d) provides that a complete condominium subdivision plan shall include a site plan.

Plaintiffs rely on *Ahearn v Bloomfield*, 235 Mich App 486, 497-498; 597 NW2d 858 (1999), to argue that the zoning ordinance does not apply to the Pier Court development because it does not specifically address site condominiums. In *Ahearn*, this Court concluded that an ordinance about the determination of the rates and charges for use of the township's sanitary sewer system did not apply to the funding of initial capital improvements because the clear and unambiguous language of the ordinance addressed only the preservation of the sewer system. *Ahearn* is distinguishable from the instant case because the clear and unambiguous language of the subdivision regulations easily translates to site condominiums. Moreover, the MCA itself does not contain any references to site condominiums.

MCL 559.110(1) provides, in pertinent part, that: "the provisions of the land division act, 1967 PA 288, MCL 560.101 to 560.293, do not control divisions made for any condominium project." A site condominium project established in conformance with the MCA is not subject to the Michigan Subdivision Control Act, MCL 560.101 *et seq.*. OAG, 1989-1990, No. 6577, p 80 (March 13, 1989). Although plaintiffs rely heavily on the absence of the phrase "site condominium" in the zoning ordinance, it must be noted that the MCA itself does not contain the phrase "site condominium." The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Gulley-Reaves v Baciewicz*, ___ Mich App ___; 679 NW2d 98 (2004). We must examine the plain language of the statute, and if the statutory language is unambiguous, presume that the Legislature intended the plainly expressed meaning. Further judicial construction is neither permitted nor required. *Id.* Therefore, we may not read into the plain language of the MCA a prohibition against the application of subdivision ordinances to condominium subdivisions.

Plaintiffs rely on *Osius, supra*, wherein the plaintiffs were denied permission to build a gasoline service station on their property. Although the ordinance in question granted the zoning board of appeals the authority to permit or refuse the erection of gasoline stations after public hearings, it contained no standards with respect to size, capacity, traffic control, the number of curb cuts, location, or any other applicable considerations. *Id.* at 700. The Court concluded that the lack of definite standards made the ordinance unconstitutional and void. *Id.*

Plaintiffs argue that the lack of an ordinance containing the phrase, "site condominium," similarly deprives the City of authority. *Osius* is distinguishable because it did not involve another ordinance that applied and offered guidance with respect to size, capacity, etc. In the instant case, the subdivision regulations require that lot areas shall conform to at least the minimum requirements of the zoning ordinance, which provides that 6,000 square feet shall be the minimum lot size. St. Clair Shores Subdivision Regulations, § 402(1)(b); St. Clair Shores Zoning Ordinance, § 35.64. The subdivision regulations similarly require that lot widths shall not be less than that required by the zoning ordinance, which requires fifty feet. St. Clair Shores Subdivision Regulations, § 402(1)(c); St. Clair Shores Zoning Ordinance, § 35.64. The subdivision regulations also require that building set back lines shall conform to at least the minimum requirements of the zoning ordinance. St. Clair Shores Subdivision Regulations, § 402(1)(c); St. Clair Shores Zoning Ordinance, § 35.64. Accordingly, we find that the zoning

ordinance, as incorporated by the subdivision regulations, is not vague and does not lack reasonable and objective standards.

The zoning ordinance defines the term "lot" as "a parcel of land occupied, or to be occupied, by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such an open spaces as are required under the provisions of this Ordinance." St. Clair Shores Zoning Ordinance, § 35.3(42). The zoning ordinance also defines "lot zoning" as:

> a single tract of land, located within a single block, which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control.
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> A zoning lot shall satisfy this Ordinance with respect to area, size, dimensions, and frontage as required in the district in which the zoning lot is located. A zoning lot therefore, may not coincide with a lot of record as filed with the County Register of Deeds, but may include it. [St. Clair Shores Zoning Ordinance, § 35.3(52).]

In their master deed, plaintiffs define "site" or "unit" as "the enclosed space constituting a single complete residential Unit or Site in Pier Court Condominium as such space may be described on Exhibit B hereto, and shall have same meaning as the term 'Condominium Unit' which is defined in the [MCA]." As noted *supra*, the MCA defines a "condominium unit" as the "portion of the condominium project designed and intended for separate ownership and use." MCL 559.104(3). Accordingly, the definition of lot easily corresponds to the definition of unit because they both refer to single or separate ownership.

Even if plaintiffs could somehow meet the minimum lot-size requirement, their proposal must meet the requirement that all lots abut a public street. In 1994, plaintiffs proposed splitting their lots into two each for the construction of four homes on the site. Deborah O'Brien of the City Attorney's office sent a letter to Schwartzenberg, discussing the requirement that the lots abut a public street. O'Brien's letter provided, in pertinent part:

> Thus, the city has in practice construed the language "abut" upon to include scenarios where a private road has been owned by abutting lot owners. Their ownership interest in the road is then to be a continuation of their lot ownership. As such, their lots are treated as abutting the public street which adjoins the private road they own.
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> Thus, it appears evident that the proposed lot splits and residential development of four homes on the sites in question could occur with or without creation of the private street in question.

This letter was prepared in response to plaintiffs' proposal to split the two lots into four, not the current proposal to split the two lots into seven. Therefore, the letter is not binding on the City with regard to the Pier Court development. Although plaintiffs have offered to dedicate the

private road to public use, it is well established that a valid dedication of land for a public purpose requires acceptance by the proper public authority. *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996).

As the trial court noted, the Pier Court development plan is not unique. We further agree with the following trial court analysis: "The [MCA's] prohibition against the different treatment of condominium proposals goes both ways. *MCL 559.241(1).* While such proposals shall not be subject to harsher scrutiny than other plans, neither shall they be given more lenient treatment or relieved from any scrutiny whatsoever, as advocated by the Giordanos." Plaintiffs are essentially attempting to exploit a perceived loophole in the MCA. As the trial court noted: "It would therefore be contrary to the interest of justice to allow the Giordanos to circumvent the ordinance merely because a certain phrase was not incorporated within its provisions." The standards for lot size and abutting a public street are reasonable and objective. Accordingly, the trial court did not err in affirming the City's decision to deny approval of plaintiffs' project for failure to meet the minimum lot-size requirements and failure to abut a public street.

Plaintiffs contend that the City was barred from exercising site plan approval by its failure to timely assert that right prior to plaintiffs' filing of the master deed. Plaintiffs also argue that the trial court erred in affirming the City Council's decision when the City Council acted without authority because the planning commission failed to issue a prior formal recommendation to the City Council. Generally, to preserve an issue for appellate review, it must be raised by a party and addressed by the trial court. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Because plaintiffs failed to raise these issues before the trial court, they are unpreserved. We need not address issues first raised on appeal. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 441 Mich 211, 234; 507 NW2d 422 (1993); *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 82, 117; 662 NW2d 387 (2003).

Plaintiffs' final argument is that the trial court erred in affirming the City Council's decision because the City was still required, pursuant to the April 22, 1997, order, to review and issue a decision with regard to plaintiffs' proposed lot split. We review application and interpretation of court rules de novo. *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). Pursuant to MCR 7.203(A)(1), this Court has jurisdiction of an appeal of right from a "final judgment or final order of the circuit court."

On September 1, 1993, the trial court entered a stipulated order dismissing the case but requiring that the request for injunctive relief be heard prior to the City issuing any building permits or final approval of any subsequent development proposed by the Giordanos. Furthermore, the Order Establishing Procedure provided: "Nothing in this Order shall prohibit [plaintiffs] from pursuing the lot splits for the same property, either previously requested or to be requested for the property . . . [The City] shall review and issue its approval or rejection of the lot split."

Plaintiffs fail to reference or otherwise identify any particular lot-splitting proposal that might be pending, and they fail to elaborate or explain their theory in any meaningful manner. It is not enough for appellants in their brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for their claims, or unravel and elaborate for them their arguments, and then search for authority either to sustain or reject their

position. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 343-344; 675 NW2d 271 (2003), applying *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

At both the planning commission meeting and the City Council meeting, only the Pier Court development was addressed. The trial court's September 18, 2002, opinion and order and November 4, 2002, judgment affirmed the City's denial of approval for the Pier Court development. No other lot-splitting proposals were mentioned. Because plaintiffs have failed to identify any other lot-splitting proposals that may be pending, we conclude that this issue is without merit. Even if we discovered remaining, unresolved issues, however, we would treat plaintiffs' appeal as an application for leave to appeal and grant such motion, which would grant jurisdiction pursuant to MCR 7.203(B)(1).

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens